IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL ST.NO.26837 OF 2007

Mahesh Rajlingam Bethi ...Appellant
vs.
Draupadibai Vijaykumar Chambadia & Ors. ...Respondents

Mr.R.D.Suryawanshi for the Appellant

CORAM: A.S.OKA,J.
DATE : NOVEMBER 30,2007.

P.C.:

1. Heard learned Advocate for the Appellant. The Appellant is the obstructions in the proceeding taken out by the Decree holder (first Respondent) under Rule 97 of Order XXI of the Code of Civil Procedure,1908. The executing court directed the removal of the obstruction of the present obstructionst-Appellant along with other obstructionist. An appeal preferred by the Appellant herein to the District Court has been dismissed.

2. The case made out by the Appellant and other obstructionist is that the Judgment Debtor No.1 Bhagwan executed a tenancy agreement in favour of the present Appellant on 1st December 2003. The other obstructionist who is not challenging the order of the trial court is the mother of the Appellant.

3. The learned Advocate for the Appellant submitted that the tenancy agreement was duly proved by examining the constituted

attorney by the Appellant. He submitted that the stamp paper for the agreement was purchased in the name of the father of the Appellant and therefore, on that ground the Appellate Court could not have held that the agreement was suspicious. He submitted that as the Appellant was in possession in his own right, the application made by the decree holder ought to have been rejected.

4. I have considered the submissions. It must be noted here that the Appellant did not enter into the witness box. He examined his constituted attorney who had no personal knowledge of the execution of the alleged tenancy agreement as he was not present at the time of execution of the tenancy agreement. The Appellant did not examine the alleged landlord who had executed the tenancy agreement. Therefore, the courts below and especially the Appellate Court has rightly held that the tenancy agreement was not duly proved. The Appellant placed reliance on alleged rent receipts. For the aforesaid reasons the Appellate court has rightly held that the rent receipts are not proved by the Appellant.

5. As the Appellant could not establish the case made out by him of creation of the tenancy in his favour, his obstruction has been ordered to be removed. No substantial question of law arises. Second Appeal is dismissed with no order as to costs.

JUDGE